REMARKS

Introduction

Claims 1-43 are pending in the application. Claims 1-43 are rejected. Claims 44-49 have been added. For the reasons discussed in detail below, all of the pending claims are in condition for allowance.

Prior Art Rejections

The Examiner has rejected claims 1-4, 6-7, 9, 11, 14, 16-21, 25-32, 34-35, and 38-43 under 35 U.S.C. § 103(a) over U.S. Patent No. 5,867,713 to Shrader et al ("Shrader") and U.S. Patent 6,401,238 to Brown et al ("Brown"). The Examiner has rejected claims 5 and 33 under 35 U.S.C. § 103(a) over U.S. Patent No. 5,867,713 to Shrader et al ("Shrader") and U.S. Patent 6,401,238 to Brown et al ("Brown") and U.S. Patent 6,269,480 to Parthesarathy et al ("Parthesarathy"). The Examiner has rejected claims 8, 10, 13, 15 and 37 under 35 U.S.C. § 103(a) over U.S. Patent No. 5,867,713 to Shrader et al ("Shrader") and U.S. Patent 6,401,238 to Brown et al ("Brown") and U.S. Patent 5,742,289 to Davis et al ("Davis"). The Examiner has rejected claims 12, 22 and 36 under 35 U.S.C. § 103(a) over U.S. Patent No. 5,867,713 to Shrader et al ("Shrader") and U.S. Patent 6,401,238 to Brown et al ("Brown") and U.S. Patent 6,289,510 to Nakajima ("Nakajima"). And the Examiner has rejected claims 23 and 24 under 35 U.S.C. § 103(a) over U.S. Patent No. 5,867,713 to Shrader et al ("Shrader") and U.S. Patent 6,401,238 to Brown et al ("Brown") and U.S. Patent 5,933,646 to

Hendrickson et al ("Hendrickson"). Applicants respectfully traverse these rejections. In the following, applicants provide an overview of their invention and then discuss the differences with Shrader and Brown and the other prior art of record.

Applicant's technique is generally directed to deploying software implementations, such as applications and other program components, when there is a potential or actual conflict among the software implementations that are specified (e.g., by administrators) to apply to a given user or machine. For example, network administrators may set policy objects to specify which programs and components apply to each user and machine, so that when a user logs on or a machine connects to the network, the user and machine automatically have appropriate programs and/or software components deployed thereto. Because different administrators can separately set the policies, and users and machines may belong to multiple, different groups to which policies apply, there may be a potential conflict among software implementations specified for deployment. By way of example, a user may belong to a finance group and an accounting group; if one policy specifies that the finance group is to use word processor X and another policy specifies that the accounting group is to use word processor Y, both applications may apply to that user. Rather than deploy both to a given machine to which the user has logged on, the present invention provides precedence information to handle the conflict, via defined precedence relationships between these applications, e.g., precedence data can specify to install word processor X and not word processor Y in the event both

apply. Note that X and Y may be different versions of the same general program, and thus the present invention facilitates lifecycle management of software implementations. Further, note that the above summary is for example and informational purposes only and should not be used to interpret the claims, which are discussed below.

Shrader is directed to a validation system that verifies an object-based installation plan for applications. As noted by the Examiner, Shrader doesn't teach maintaining precedence information between software implementations. Nor does Shrader teach determining from the precedence information which one of the plurality of software implementations to apply. Significantly, as part of validation, Shrader may have to add prerequisite child objects of an application to an installation plan, but clearly does not teach or suggest making any "selection" between which of two (or more) objects to add to the plan and which to not add, let alone do so based on anything even remotely resembling an established precedence relationship between such objects.

Brown is directed to selecting and deploying one of several tuned versions of an application based upon network conditions such as network load, bandwidth utilization and time-of-day. Brown doesn't teach maintaining precedence information between software implementations. Nor does Brown teach determining from the precedence information which one of the plurality of software implementations to apply. Significantly, Brown instead determines which of a given set of application versions may be served to a client based upon the user's priority for obtaining a given version of an application. Brown may

maintain priority information between users but clearly does not teach or suggest maintaining precedence information between software implementations. Nor does Brown teach determining from the precedence information between software implementations which one of the application versions to apply. Significantly, Brown selects an application version based upon user priority, not precedence information between software implementations.

Applicants respectfully submit that dependent claims 2-15, independent claim 16 and its dependent claims 17-29, claim 30 and its dependent claims 31-43, and new claims 44-49, by similar analysis, are not anticipated by Shrader or Brown. Dependent claims 2-15 include the limitation of "maintaining precedence information at a network location indicative of precedence relationships between software implementations." As discussed above regarding claim 1, the sections of the relied-upon reference allegedly disclosing this element do not describe precedence information between software implementations. In particular, the relied-upon section in Brown describes selecting an application version based upon user priority. Claims 16-29 also include the limitation of maintaining "precedence relationships between the software implementations." And claims 44-49 also include the limitation of "maintaining precedence information specifying a precedence relationship between software implementations." Finally, claims 30-43 are likewise not anticipated by Shrader or Brown. Claims 30-43 includes the limitation of "maintaining precedence information specifying a precedence relationship between the first software implementation and the second software implementation." Nowhere in Shrader or Brown is there a

description of specifying a precedence relationship between a first software implementation and a second software implementation. As noted previously, Brown discusses which of a given set of users have priority for obtaining a given version of an application, not which software implementation may have a precedence relationship to another software implementation.

None of the other prior art of record teaches or discloses maintaining precedence information between software implementations. Applicants submit that the claims are patentable over Shrader and any of the other prior art of record for at least the reasons set forth above, e.g., like Shrader, none of the other prior art of record discloses, suggests or provides any motivation for handling the selective deployment of one software implementation over another, based on precedence information, when a plurality of software implementations are specified for deployment. In making these §103(a) rejections, applicants note that the Office action has again confused dependency with precedence, which are distinct concepts. Thus, even if somehow permissible to combine Shrader with Parthesarathy, Davis, Nakajima and/or Henderickson, the claims are not reached, as by law, in order to establish *prima facie* obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). In addition, "all words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Further, considering the §103(a) rejections as a whole, it appears that the Office has relied on applicants' teachings in a (failed) attempt to reconstruct applicants' invention. For example, instead of pointing out where some motivation to combine exists, the Office action merely makes conclusory statements based on applicants' teachings; e.g., in rejecting claim 5, the Office action refers to "advertising" even though advertising as defined and claimed (as a software implementation available for execution prior to actual installation) is not considered in Parthesarathy, nor does it meet the definition used in the Office action. Similarly, in rejecting claim 11, the Office action again confuses priority between users with a precedence relationship between software (in the present invention, data about the precedence relationship between software is used to determine which software implementation to install, and not user priority). Davis (column 14, lines 7-10) simply deletes files prior to an update; no precedence information is accessed. Nakajima (column 7, lines 5-10) is directed to tracking file installation states, not specifying what to do with files, let alone any precedence-based behavior. Henderickson refers to deinstallation, but is essentially silent as to how this is done, other than based on user specified changes.

For a combination of prior art references to render an invention obvious, there must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. *In re Oetiker*, 977 F.2d 1443, 1447, 24 USPQ2d 1443, 1446 (Fed. Cir. 1992). A finding of obviousness on any other basis would constitute

impermissible hindsight. See *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985). Otherwise, combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of impermissible hindsight. *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).
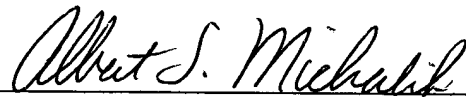
In the present application, the Office action has essentially done what is not proper by law, and used applicants' teachings as a blueprint, using an (incorrectly) modified Shrader for some of the claimed limitations, and, without any specific evidence of motivation to combine, has hunted for other references that might supply the limitations present in the application but missing from Shrader. Instead of presenting any specific evidence of motivation to combine, the Office action has only made conclusory statements that are wholly unrelated to the claims in order to allege obviousness. However, such broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence of obviousness. Id.

For at least these additional reasons, applicants submit that the claims are patentable over the prior art of record, whether considered alone or in any permissible combination, and respectfully request reconsideration and withdrawal of the rejections based thereon.

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Conclusion

Based upon the above remarks, all of the pending claims are in condition for

allowance. Applicant respectfully requests reconsideration of this application and

its early allowance. If in the opinion of the Examiner a telephone conference would

expedite the prosecution of the subject application, the Examiner is invited to call

the undersigned attorney at (425) 836-3030.

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1650 Preliminary amendment